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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(El Dorado)

DARIN P. SMEDBERG et al.,

Plaintiffs and Respondents,

v.

GERALD D. TOSTE et al.,

Defendants and Appellants.

C068218

(Super. Ct. No.
PC20060340)

Plaintiffs and respondents Darin P. Smedberg, Kenneth P. Smedberg and Bonnie L. Smedberg (the Smedbergs) obtained a money judgment and wage garnishment order against defendant and appellant Gerald D. Toste (Toste). Toste contends on appeal that the trial court erred in denying his claim of exemption. He argues that the trial court ignored the evidence he presented and applied the wrong legal standard.

We conclude that the trial court did not err. Instead, Toste failed to meet his burden because he did not submit the

information required by the applicable exemption statute. We will affirm the order denying Toste's claim of exemption.

BACKGROUND

The Smedbergs obtained a money judgment against Toste in 2007. (See *Smedberg v. Toste* (Dec. 10, 2008, C056578) [nonpub. opn.] .) The Smedbergs also obtained an order garnishing Toste's wages earned as a seasonal Heavenly Valley ski patroller.

Toste filed a claim of exemption to the wage garnishment in March 2011, asserting that his wages are exempt from garnishment because the necessary expenses for support of his family exceed his wages. In a declaration filed in support of the claim of exemption, Toste averred that he and his wife are separated, but he nonetheless pays the mortgage on the house where his wife and daughter live, and he also pays rent for the apartment where he resides. Toste declared that his net monthly pay is \$2,678, but his monthly expenses to support himself and his daughter are \$2,922 per month, including a \$1,131 mortgage payment, a \$200 payment on a home equity line of credit, \$500 rent for his apartment, a \$72 payment for his motorcycle, and \$600 per month for food. Toste attached to the declaration his January 2011 pay stub, a March 2011 mortgage payment coupon, and a month-to-month residential lease agreement for the period November 2010 to May 2011.

The Smedbergs opposed Toste's claim of exemption, arguing among other things that Toste cannot be making mortgage payments because he transferred ownership of the house to his wife, his rental payments are in doubt because he is always seen at the

house and seems to be staying there, and Toste essentially said during his oral examination that he has no expenses because he is living hand to mouth.

Toste responded that he is still legally obligated to pay the mortgage and the home equity line of credit, and he remains responsible to pay living expenses for his high school-aged daughter, including a \$134 per month car payment.

At the hearing, Toste's attorney represented that his monthly obligations on the two house loans (the mortgage and the equity line of credit), the utilities on the house, and food for his daughter -- taken alone -- total more than \$2,700, and exceed Toste's net monthly wages. Toste's attorney also represented that Toste's wife lost her job and is unemployed. No additional evidence was taken at the hearing, although Toste's wife was present and Toste's counsel made an offer of proof that she could testify regarding the house maintenance expenses.

The Smedbergs argued that Toste failed to prove that he actually incurred the claimed expenses, because he produced no cancelled checks or other evidence showing he is actually paying the enumerated expenses. They added that Toste's separation from his wife is a "sham"; Toste lived in the house with the wife and could continue to do so to avoid paying apartment rent; he could not have transferred his assets to his wife but retained the liabilities; he lied about the ownership of other assets; and he made no payment on the judgment.

The trial court took the matter under submission and denied Toste's claim of exemption.¹

DISCUSSION

Toste contends that the trial court erred in denying his claim of exemption. He argues that the trial court ignored the evidence he presented and applied the wrong legal standard. We conclude, however, that the trial court did not err. Instead, Toste failed to meet his burden because he did not submit the information required by the applicable exemption statute.

We begin with a summary of the statutory scheme and the standard of review. As a general rule, all property of a judgment debtor is subject to enforcement of a money judgment, and California has enacted a "comprehensive and precisely detailed scheme" governing enforcement of money judgments. (*Ford Motor Credit Co. v. Waters* (2008) 166 Cal.App.4th Supp. 1, 7-8; Code Civ. Proc., §§ 697.010-706.154;² see also *Kono v. Meeker* (2011) 196 Cal.App.4th 81, 86.)

¹ The parties suggest we should look to the content of the trial court's tentative ruling to explain the trial court's final order denying Toste's exemption claim. Generally, however, a tentative ruling cannot be used by an appellant to cast doubt on a subsequent judgment or order. (*In re Marriage of Ditto* (1988) 206 Cal.App.3d 643, 646-647.) And where, as here, the tentative ruling and the order after hearing are issued by different judges, the reasoning set forth in the tentative ruling is not dispositive.

² Undesignated statutory references are to the Code of Civil Procedure.

One remedy available to judgment creditors is wage garnishment. (§ 706.010 et seq.) California's wage garnishment law "limits the amount of earnings which may be garnished in satisfaction of a judgment" (*California State Employees' Assn. v. State of California* (1988) 198 Cal.App.3d 374, 377.) Generally, a garnishment may not exceed 25 percent of a worker's "disposable earnings." (15 U.S.C. § 1673; *Barnhill v. Robert Saunders & Co.* (1981) 125 Cal.App.3d 1, 6 & fn. 2.) The judgment debtor may also file a claim of exemption to show that the garnishment should end because the funds subject to levy are needed to support his family. (§§ 703.520, 703.530, 706.051, 706.105.) Such exemptions are wholly statutory and cannot be enlarged by the courts. (*Kono v. Meeker, supra*, 196 Cal.App.4th at p. 86.) The trial court decides whether to grant the claim of exemption based on the declarations of the parties and any evidence presented at the hearing. (*Ibid.*; § 703.580.)

Orders granting or denying a claim of exemption are appealable. (§ 703.600; *Kono v. Meeker, supra*, 196 Cal.App.4th at p. 86, fn. 2.) The trial court's order is presumed correct, and must be upheld if supported by substantial evidence. (*Schwartzman v. Wilshinsky* (1996) 50 Cal.App.4th 619, 626; *Bowers v. Bernards* (1984) 150 Cal.App.3d 870, 872-874.) In addition, all evidence must be viewed in the light most favorable to respondent as the prevailing party, and all evidentiary conflicts or inferences must be resolved in support of the trial court's order. (*Schwartzman v. Wilshinsky, supra*,

50 Cal.App.4th at p. 626.) Where there is no evidentiary conflict or the facts are undisputed, the scope of an exemption is a question of law, which we review de novo. (*Kono v. Meeker*, *supra*, 196 Cal.App.4th at p. 87; *In re Lieberman* (9th Cir. 2001) 245 F.3d 1090, 1091.) Although the burden of proof lies with the party claiming the exemption, exemption statutes are generally construed in favor of the debtor. (*Kono v. Meeker*, *supra*, 196 Cal.App.4th at p. 86.)

Toste sought exemption under section 706.051, which exempted from levy "the portion of the judgment debtor's earnings which the judgment debtor proves is necessary for the support of the judgment debtor or the judgment debtor's family" (Former § 706.051, subd. (b).)³ The judgment debtor's "family" under this section includes his spouse or former spouse. (§ 706.051, subd. (a).)

"There is no precise definition of what is 'necessary' for the support of a judgment debtor or his or her family." (Ahart, Cal. Practice Guide: Enforcing Judgments and Debts (The Rutter Group 2011) [¶] 6:1179, p. 6F-25 (rev. #1, 2009); see *J.J. MacIntyre Co. v. Duren* (1981) 118 Cal.App.3d Supp. 16, 18 [interpreting same language contained in former section

³ The statute created exceptions to the "necessary for the support" exemption not applicable here. For example, the exemption may not be claimed by a judgment debtor if his debt arises from "common necessities of life" supplied to himself or his family (former § 706.051, subd. (c)(1)), or if the debt was incurred for personal services rendered by an employee of the judgment debtor (§ 706.051, subd. (c)(2)).

723.051].) "Necessary" normally includes housing costs, food, insurance, and automobile costs, but the "determination of what is 'necessary' for the support of the judgment debtor or his family has not been subject to a precise definition and differs with each debtor." (*J.J. MacIntyre Co. v. Duren, supra*, 118 Cal.App.3d Supp. at p. 18 [holding hospital services to be "common necessary of life"]; Ahart, Cal. Practice Guide: Enforcing Judgments and Debts, *supra*, ¶ 6:1179, p. 6F-25.)

A claim of exemption under section 706.051, subdivision (b) must be supported by a financial statement that includes (1) the name of the judgment debtor's spouse, (2) the name, age and relationship of all persons dependent on the judgment debtor or the spouse of the judgment debtor for support, (3) all sources and the amounts of earnings and other income of the judgment debtor and the spouse and dependents of the judgment debtor, (4) a list of the assets of the judgment debtor and the spouse and dependents of the judgment debtor and the value of such assets, and (5) all outstanding obligations of the judgment debtor and the spouse and dependents of the judgment debtor. (§ 703.530, subd. (b).) The financial statement must be executed under oath by the judgment debtor and also by the spouse of the judgment debtor, unless the spouses are living separate and apart. (§ 703.530, subd. (c).)

In addition, the statutory scheme requires that, "[i]n determining an exemption based upon the needs of the judgment debtor and the spouse and dependents of the judgment debtor or an exemption based upon the needs of the judgment debtor and the

family of the judgment debtor, the court shall take into account all property of the judgment debtor and, to the extent the judgment debtor has a spouse and dependents or family, all property of such spouse and dependents or family, including community property and separate property of the spouse, whether or not such property is subject to enforcement of the money judgment." (§§ 703.115, 703.530; see also Ahart, Cal. Practice Guide: Enforcing Judgments and Debts, *supra*, ¶ 6:1179, p. 6F-26 (rev. #1, 2009).)

Toste's financial statement did not provide the required information. It did not include real estate assets even though Toste's attorney admitted that Toste's wife held title to the house. It only listed Toste's motorcycle, but in Toste's response in support of his claim of exemption he said he was also responsible for his daughter's car expenses. In addition, the financial statement did not include his wife's income or expenses as required by the statute.⁴

There is also evidence that Toste did not include relevant business information. Toste's rental application listed his email address as thesculptoroftahoe@yahoo.com. The Smedbergs' counsel identified a business owned by Toste and/or his wife called The Sculpture of Tahoe. But Toste's financial statement

⁴ At the hearing, Toste's attorney made an offer of proof that Toste's wife was present and could testify about the expenses associated with maintaining the house. But counsel did not make an offer of proof regarding Toste's wife's assets, and she did not testify.

did not identify the business as an asset belonging to Toste or his wife.

Accordingly, Toste failed to file the required "list of [all] assets . . . and the value of such assets" (§ 703.530, subd. (b)(4)) or a complete list of "[a]ll outstanding obligations" (§ 703.530, subd. (b)(5)). Thus, he failed to give the trial court sufficient evidence to sustain his burden of proving that his earnings are "necessary for the support of the judgment debtor" and his family. (§§ 706.051, subd. (b), 703.115.)

While the exemption statutes should "be construed, so far as practicable," to the judgment debtor's benefit (*Schwartzman v. Wilshinsky, supra*, 50 Cal.App.4th at p. 630), Toste cannot escape their requirement that he support his exemption claims with evidence regarding his finances. Because he failed to do so, the trial court did not err in denying his exemption claim.⁵

⁵ We also reject Toste's contention that his garnished wages must be released because the trial court failed to set the hearing on the Smedbergs' challenge to his exemption claim within the required time period. The Smedbergs filed their notice of hearing on March 21, and the hearing date was set for 30 days later, as required by section 706.105, subdivision (e).

DISPOSITION

The trial court's order denying Toste's claim of exemption is affirmed. The Smedbergs shall recover their costs on appeal. (Cal. Rules of Court, rule 8.278(a)(1).)

_____, MAURO, J.

We concur:

_____, ROBIE, Acting P. J.

_____, BUTZ, J.